UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,144	08/13/2002	Jobst Matthias Muehlbach	5266-05900	8210

44015   7590   02/12/2008
OPTV/MEYERTONS
RORY D. RANKIN
P.O. BOX 398
AUSTIN, TX 78767-0398

EXAMINER
AUSTIN, SHELTON W

ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
02/12/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>15 January 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

        Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _____.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.
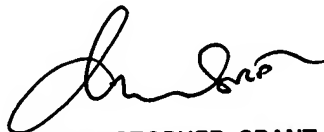
<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

    <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's argument (page 8, paragraphs 1 & 3 and page 9, paragraph 1 of applicant's Remarks) that Kostreski fails to teach a "built-in banner" as recited in claim 1, the applicant should note that the Kostreski et al. (US 5,734,589) patent teaches an improved digital entertainment terminal (DET) that has the functionality of a conventional terminal device in addition to the novel feature of offering "surfer applications" from different video information service providers (VIP). Kostreski et al. ("Kostreski") clearly teaches that "a need exists in the art for set-top terminal devices...that are readily adaptable to perform a variety of related functionalities as needed to facilitate a range of audio/video and interactive services offered by a large number of video information providers" (col. 3, lines 46-57). Conventional terminal devices are commonly known to have "a limited set of functionalities constrained by the hard wired programming (i.e. "built-in") of the internal micro-processor controlled device (col. 1, lines 18-21)." Kostreski also teaches "[t]he precise interpretation of specific command signals can vary based on the downloaded applications programming and/or operating system software stored in the system memory (col. 11, lines 32-36)." The user has the option of downloading VIP application software (col. 15, line 58-col. 16, line 5-"[i]f interactivity with a particular VIP is desired, the level 1 gateway would be accessed..."). It is apparent from Kostreski that when a user accesses a particular VIP's software and at least a portion of that software is stored in the DET memory, it is then that the DET uses that information to select program services in response to user inputs (col. 27, lines 26-34). Therefore, Kostreski teaches a "built-in banner" as recited in claim 1.

In response to applicant's argument (page 10, paragraph 1) that "neither map is equivalent to the recited list of surfers", the applicant should note that Kostreski teaches a primary map that includes a list of VIP's downloadable applications ("surfers") that can be further selected to provide at least one secondary map that provides a program guide of a corresponding VIP listing available services (Fig. 5; col. 5, lines 58-66), which is, according to the examiner, equivalent to the recited list of surfers.

In response to applicant's argument (page 10, paragraph 2) that the cited portion of Kostreski does not refer to caching a plurality of downloaded surfer applications, the applicant should note that Kostreski teaches downloading necessary MPEG decoding data for all of a VIP's broadcast programs as part of the application software downloaded and stored in the RAM as part of the navigation software/database (col. 31, lines 39-49).

CHRISTOPHER GRANT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600